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IN THE

Supreme Court of the United States

OCTOBER TERM—1946

FRANK F. WHITFIELD, individually and as guardian
of and for HAROLD R. WHITFIELD, an incompetent,
Petitioners,

vs.

THEODORE D. PARSONS and HARRY D. HEAVILAND, Executors
of the last will and testament and codicil of Howard
Whitfield, deceased, and the "Howard Whitfield Founda-
tion," a corporation of New Jersey,

Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI**

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Solicitors for Respondents,
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Red Bank, New Jersey.

✓ THEODORE D. PARSONS,
Of Counsel.

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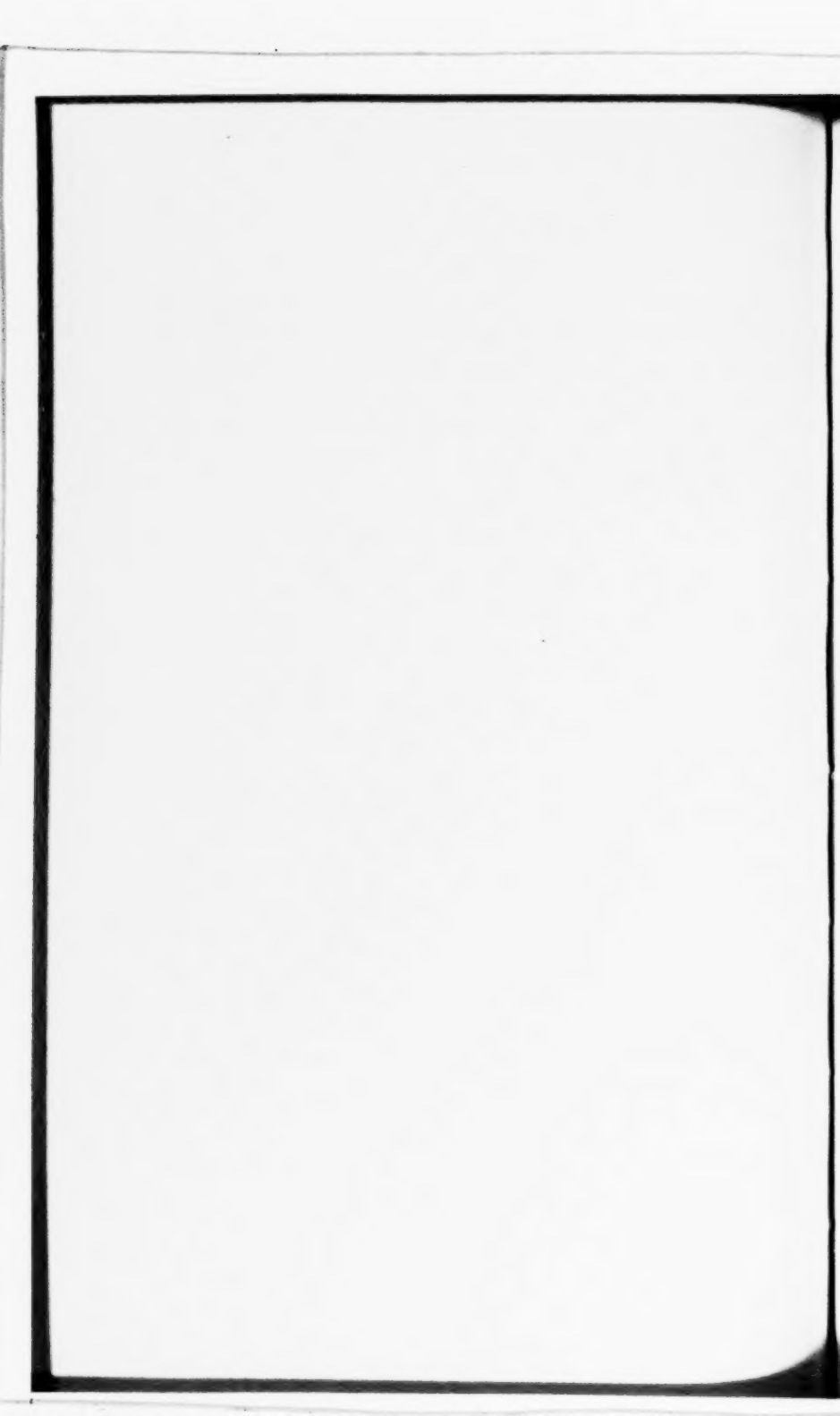
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The Opinion Below

The petitioners, the appellants below, seek a review of the decision of the Court of Errors and Appeals of New Jersey, affirming a decree of the Court of Chancery restraining the further prosecution of an Action in Ejectment instituted by them in the New Jersey Supreme Court, *Parsons v. Whitfield*, 139 N. J. Eq. 459. The opinion of the Court below is found on page 134 *et seq.* of the Record. The Decree of the Court of Chancery and the Decree of Affirmance are found at pages 63 and 138 respectively of the Record.

Petitioners seek to invoke the jurisdiction of this Court on the sole ground that the verdict below was in violation of Article 14, Section 1 of the Constitution of the United States.

Statement of the Case

The present proceedings concern the administration of the estate of the late Howard Whitfield. Mr. Whitfield died a resident of the Borough of Red Bank, on September 20, 1938. The greater part of his estate consisted of two contiguous pieces of real estate, located in the Borough of Red Bank, County of Monmouth and State of New Jersey. One of these was located at No. 73 Broad Street and is the subject of the present controversy. By the terms of Mr. Whitfield's will, petitioner Frank F. Whitfield, was cut off entirely. His incompetent brother, Harold R. Whitfield, was left a lifetime annuity, which annuity has been regularly paid by the executors. Frank F. Whitfield is and has been the guardian of Harold R. Whitfield since the death of the testator.

Shortly after the admission of the will to probate, petitioners instituted an action in the Court of Chancery of New Jersey, *sub nomine Whitfield v. Parsons, et als.*, Chancery Docket No. 124/438, for the purpose of having the will construed. In this proceeding, they made claim to the testator's estate and prayed that the Court might determine their interest therein. The Court decreed that neither of the petitioners had any interest in their father's estate, except as to the annuity provided for Harold R. Whitfield.

Upon appeal to the New Jersey Court of Errors and Appeals, the decree of the Court of Chancery was unanimously affirmed. *Whitfield v. Parsons*, 134 N. J. Eq. 352. Notwithstanding the Decree of the Court of Chancery adjudging that they were not entitled to share in their

father's estate, and its affirmance by the highest appellate Court of the State, petitioners herein instituted in the New Jersey Supreme Court an action in ejectment to recover possession of the real estate known as No. 73 Broad Street. In view of the previous decree of the Court of Chancery, and of the duty cast upon the executors of retaining all of the property of the testator until payment of all of the annuities, and thereafter of transferring the remainder to the Howard Whitfield Foundation, the executors and the Howard Whitfield Foundation instituted proceedings in the Court of Chancery to restrain the further prosecution of the ejectment suit. In doing so, they charged that the matters at issue had already been determined as between the parties and were *res adjudicata*, and that the litigation at law was oppressive and vexatious.

After issue joined and final hearing had, the Court decreed that the issues involved in the ejectment suit had been effectively disposed of in the will construction case and were *res adjudicata*, and the defendants-appellants (petitioners herein) were enjoined from further proceeding with the suit at law.

This action of the Court was unanimously affirmed by the New Jersey Court of Errors and Appeals in *Parsons v. Whitfield*, 139 N. J. Eq. 459, 51 Atl. Rep. (2nd) 365, which decision petitioners now seek to have reviewed by this Court.

The testator's will is found printed in the Record (State of Case, at page 13). In it, the petitioner, Frank F. Whitfield, is completely cut off by the testator. By the second paragraph of the will, he is even excluded from burial in the family burial plot. By the third clause, all of the rest, residue and remainder of the estate is left to the executors in trust, with directions as to the payment of the income to the testator's second wife during her lifetime, and thereafter to the children of the marriage, if any. In the absence of children of the marriage, an-

nuities in the amount of One Thousand (\$1,000.00) Dollars each were provided for Harold R. Whitfield, and others. By the Seventh clause of the will, provision is made for the transfer to the Howard Whitfield Foundation of the remainder of the trust estate, after payment of the annuities.

In the prior proceedings, the present petitioners prayed not only for construction of their father's will, but also for an injunction until their rights under the same should be determined. They made claim to their father's estate as residuary legatees and devisees under the third paragraph of his will. In the alternative, they charged intestacy and claimed as next-of-kin and heirs-at-law of the testator. They charged that the premises at No. 73 Broad Street was excepted from the residuary estate which passed to the executors in trust (Record, p. 35, l. 29 to p. 26, l. 15).

To the complaint, the executors filed answer. Among other things, they denied the allegations of the complaint which charged that the premises at No. 73 Broad Street would not pass to them as part of the trust under the will. They denied that Frank F. Whitfield was entitled to share in the estate at all. They charged that the only interest of Harold R. Whitfield was in connection with the annuity provided for him in the will. Finally, they prayed that the bill might be dismissed, or that, in the alternative, the court might construe the will and give them such instructions as were necessary and proper under the circumstances (R. p. 103, l. 20 to p. 107, l. 42). A somewhat similar answer was filed by Grace Whitehouse Lloyd, another *cestui que trust*.

The Court of Chancery, after hearing, found that the entire estate of the testator (which included the premises at No. 73 Broad Street, Red Bank) passed to the executors as part of the trust estate. It decreed that the petitioners herein had no interest therein, except as to the annuity provided for Harold R. Whitfield. It gave in-

structions to the executors, directing them, upon payment and satisfaction of the annuities, to transfer all of the testator's property remaining in their hands to the Howard Whitfield Foundation (R. p. 28 at p. 30).

The present controversy rests upon two main questions. They are: (1) After a decree in the Court of Chancery on the merits, unreversed, may a suit at law for the same relief be enjoined as vexatious or oppressive? (2) Were the prior proceedings in the Court of Chancery between the same parties *res adjudicata* as to the subsequent action instituted by the present petitioners.

ARGUMENT

POINT I

After a decree in Chancery on the merits, a suit at law for the same relief is vexatious and constitutes a contempt of court and will be restrained by injunction.

The executors, the original complainants herein, found themselves in a position where they were forced to seek the aid of the Court of Chancery to restrain the ejectment proceedings initiated by the petitioners herein. In the proceedings in Chancery, which had just been concluded, they had been instructed by the Court that Frank F. Whitfield and Harold R. Whitfield had no interest in the properties left by the testator, and that the entire estate passed to them as the executors charged with the administration of the trusts provided under the will. Under the will, they received the testator's entire estate, in trust. They were required to pay out of the income therefrom, the annuities to Grace Whitehouse Lloyd and Harold R. Whitfield. They had been instructed by the Court, upon the death of the annuitants, to turn over the remainder of the estate (which included the real estate) to the

Howard Whitfield Foundation. These facts notwithstanding, the petitioners herein sought to circumvent the decree of the Court of Chancery by the institution of a second suit in the Supreme Court.

The rule is well settled that a party whose rights have thus been once adjudicated on the merits cannot be compelled to submit to re-adjudication of such rights in a subsequent action. In such a case, injunctive relief against the prosecution of the second action will be given.

One of the earliest New Jersey cases on this point is *Putnam v. Clark*, 34 N. J. Eq. 532, where Vice Chancellor Van Fleet held:

“The doctrine of *res adjudicata* rests on strong reasons of public policy, and also of private right. If, after decree in equity, a party shall proceed at law for the same matter, equity will restrain him by injunction. Such suit at law is treated as contempt of court, for it is gross oppression to vex another with a double suit for the same cause of action. 2 Lead. Cas in Eq. 1319 (635); Story’s Eq. Jur. 889; Joyce on Inj. 1040; *Simpson v. Hart*, 1 Johns. Ch. 91 (a); *Washington Packet Co. v. Sickles*, 24 How. 333, Wall. 580.”

The opinion of the learned Vice Chancellor was unanimously affirmed by the New Jersey Court of Errors and Appeals in an opinion by Chief Justice Beasley, which held:

“The proposition for which the appellant contends is this, that a party, as the actor in the suit, may voluntarily submit his contest for decision to a tribunal in a state of the evidence which is exclusive of his own oath, and such decision being adverse, may retry the same issue, on the ground that he is desirous of introducing his own testimony. If this be so, then,

in this class of cases, such actors have it in their power, in every instance, to vex their adversaries by two trials, instead of, as in common cases, being stinted to one. It will be observed that, in this instance, the appellant had it in her power to choose, in the first instance, the legal forum in which her action is now pending, so that her own oath would have availed; but she selected the equitable forum, and, having failed, now claims the right of having her case heard in its turn by the former. This claim is plainly opposed to the doctrine that imparts to the *res judicata* its state of being conclusive. That doctrine grows out of the inconvenience and injustice of the repetition of litigations between the same parties on the same issues.

“‘After a recovery by process of law’, says Lord Kenyon (*Marriott v. Hampton*, 7 T. R. 269), ‘there must be an end of litigation; for if it were otherwise, there would be no security for any person.’”

In *Sarson v. Maccia*, 90 N. J. Eq. 433 (N. J. Chancery), a similar situation was presented, and it was held that a suit at law for the same matters which had been previously passed upon by the Court of Chancery would be treated as a contempt of Court and enjoined accordingly. In the opinion of the Court, it was held:

“‘The defendant threw her lot with the Court of Chancery, and after an exhaustive investigation, and upon principles more favorable to her than the law courts could afford, the cause, which she again desires to litigate, was determined against her; and by that determination she is bound.’”

And further held:

“‘Counsel for the defendant questions the jurisdiction of this Court to restrain the suit for deceit,

contending that the complainant has a complete and adequate defense at law. *Res adjudicata* by a decree in equity is, doubtless, pleadable in the action at law, but the party holding the decree is not driven to that defense. It is the settled law of this state (and I quote from the opinion of this court in *Putnam v. Clark*, 34 N. J. Eq. 532, affirmed by the court of errors and appeals) that: 'If, after a decree in equity, a party shall proceed at law for the same matter, equity will restrain him by injunction. Such suit at law is treated as contempt of court, for it is gross oppression to vex another with a double suit for the same cause of action.' Lead Cas. Eq. 1319 (635); Story Eq. Jur. 889; Joyce Inj. 1040; *Simpson v. Hart*, 1 Johns. Ch. 91(a); *Washington Packet Co. v. Sickles*, 24 How. 333; 5 Wall 580."

To the same effect is *Logan v. Flattau*, 73 N. J. Eq. 222.

The doctrine of *Putnam v. Clark*, *supra*, was followed in the more recent case of *Lane v. Rushmore*, 123 N. J. Eq. 531 (N. J. Chancery), where it was held:

"The application of *res judicata* occurs in two classes of cases: (1) in which a party having had his day in court, comes in again seeking relief for the same cause of action, and (2) where a party whose rights have once been adjudicated, initiates a new controversy involving issues passed upon by the court in the original contest. In the former, the outcome of the prior controversy is a complete bar even though the issues tendered in the second action may be such as were neither formulated nor treated before, while under the latter, the operation of *res judicata* is confined to matters actually determined or necessarily involved in the prior adjudication."

And further held:

"I conclude that it is not essential to the complainant's case that it be established that the causes of action at law and in equity be identical to invoke the principle of *res judicata*. As already stated hereinabove, it is sufficient if it be established that in an earlier cause of action there was actually brought in issue, litigated and determined, a question sought to be tried anew in a subsequent case. The issue at law is the alleged bad faith of Mrs. Rushmore and her solicitor Mr. Lane, the complainants herein, in commencing and prosecuting the matrimonial causes. That issue was tried and adjudicated in this court. No distinction has been suggested and indeed none exists between the issue of good faith as determined by this court and that raised in the complaint at law."

And further:

" 'The doctrine of *res adjudicata* rests on strong reasons of public safety, and also of private right. If, after decree in equity, a party shall proceed at law for the same matter, equity will restrain him by injunction. Such suit at law is treated as contempt of court, for it is gross oppression to vex another, with a double suit for the same cause of action.' *Putnam v. Clark* (Court of Errors and Appeals), 34 N. J. Eq. 532, 535. Injunction to restrain an action at law will lie where the subject-matter thereof has been considered by the Court of Chancery, and the same issues determined against the defendant. *Logan v. Flattau*, 73 N. J. Eq. 222."

And further held:

" 'The doctrine (*res judicata*) under consideration is not a mere rule of procedure, limited in its opera-

tion, and only to be enforced in cases where a defeated suitor attempts to litigate anew a question once heard and decided against him, but a rule of justice, unlimited in its operation, which must be enforced whenever its enforcement is necessary for the protection and security of rights and for the preservation of the repose of society.' *City of Paterson v. Baker, supra*.

"It would be intolerable to permit a suitor endlessly to litigate and relitigate his alleged grievance. At some point in the controversy he must accept the award of the court as final and conclusive, and that point is reached when a court of competent jurisdiction has heard and considered all that has been or could have been said by way of evidence and argument on the issues raised in the pleadings and handed down its decision. *Mendel v. Berwyn Estates*, 109 N. J. Eq. 11. Here, as was said by the court of errors and appeals in *In re Walsh's Estate, supra*, 'All that is necessary is that the right to relief in the one suit shall rest upon the same point or question, which, in essence and substance, was litigated and determined in the first suit, and in such a case the parties and those in privity with them are concluded, "Not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."' The protection afforded by the rule invoked and applied in the *Berwyn Estates* Case and the *Putnam* Case (both *supra*) and the other cited cases is available alike to client and solicitor."

In affirming the decision of the Court of Chancery in *Lane v. Rushmore, supra*, the New Jersey Court of Errors and Appeals held:

“The further question remains as to whether or not, the suit being at law and a plea of *res adjudicata* being permissible in that action, the court of chancery may restrain. This seems to be set at rest by the opinion of this court in *Putnam v. Clark*, 34 N. J. Eq. 532. In that case Vice Chancellor Van Fleet said: ‘The doctrine of *res adjudicata* rests on strong reasons of public policy, and also of private right. If, after decree in equity, a party shall proceed at law for the same matter, equity will restrain him by injunction. Such suit at law is treated as contempt of court, for it is gross oppression to vex another with a double suit for the same cause of action.’ Citing authorities. In the opinion in this court, Chief Justice Beasley said ‘The vice-chancellor has stated, with great clearness, the legal rule applicable to this case, and the decree should be affirmed with costs.’ ”

Applying the doctrine of *Putnam v. Clark*, *supra*, to the facts *sub judice*, the conclusion logically follows that the present petitioners were not entitled to relitigate the same issue which had been previously determined by the Court of Chancery.

Accordingly, they were properly enjoined from doing so.

POINT II

The Court of Chancery had jurisdiction to construe the testator's will and give instructions to the executors as to the administration of the trust.

In their brief below, the defendants-appellants sought to avoid the effect of *Putnam v. Clark, supra*, and the decisions which followed it, by charging that the Court of Chancery was without power or jurisdiction to determine the issues raised in the prior suit between the parties. The argument is repeated in their present brief.

In the argument under this point, it is in no wise contended that the Court of Chancery was without jurisdiction over the parties. On the contrary, it is admitted that all parties were properly before the Court. It is contended, however, that the Court of Chancery was without power to construe the will and that, hence, its decision, as affirmed by the highest appellate Court of the State was a nullity.

It is respectfully submitted that this contention is untenable and is at variance with applicable decisions of the courts of the state.

As has been pointed out, *supra*, the bill which was filed in the prior litigation by the present petitioners did not pray for construction of the will alone. They charged, in addition, that the executors were about to convey away the greater part of the testator's estate, that this would be in violation of their rights under the will, and prayed that the executors should be enjoined from so doing until their rights were determined. Both the executors and Grace Whitehouse Lloyd filed answer. The executors in their answer set forth their interpretation of the construction to be accorded the will of the testator and described the manner in which they had been and proposed to carry out the trust contained in the will. Their answer

concluded with a prayer, in the alternative, that the Court might construe the will and give them instructions in the premises.

The answer of the *cestui que trust*, Grace Whitehouse Lloyd, likewise contained an alternative prayer for the construction of the will. A further answer was filed by one Gertrude Happ, in which she prayed either that the bill be dismissed or that the Court might construe the decedent's will and codicil in accordance with her answer.

The rule would seem to be well settled that in situations such as the one presented, the Court of Chancery had ample jurisdiction to award the relief prayed for.

In *Hoagland v. Cooper*, 65 N. J. Eq. 407, Vice Chancellor Magie held:

"The Court of Chancery, when called upon to exercise its judicial functions in determining whether the relief sought by a suitor should be granted, and when the question whether such relief should be granted involves the construction of a will, has undoubted power and it is its duty to construe the will. The peculiar jurisdiction of this court over trusts and over those charged with trusts frequently requires it, *upon the instance of such trustees or those interested*, to give directions for the conduct of such trustees in the administration of the trust, and when the trust is created by will incidentally the exercise of this jurisdiction to direct involves the construction of the will."

And further held:

"The cases in which this court has exercised jurisdiction to construe wills are very numerous. Most of them are cases in which the trustee, or one charged with duties of a fiduciary character, has sought the aid of the court to direct him with respect to his official duty as trustee and in which the determination

as to what direction should be given is involved with the construction of the will."

The instant case falls clearly within the doctrine enunciated above. Admittedly, a trust had been created under the will of the testator. The principal matters in dispute were the extent of the trust and the manner of administering the same, particularly the ultimate disposition of the estate after payment of the annuities.

The principal part of the testator's estate consisted of the two pieces of realty known as 73 Broad Street and 16-18 Wallace Street, Red Bank, N. J. The complainants (the present petitioners) contended that this realty was not part of the trust *res* which passed to the executors (R. p. 26, ll. 7 to 13). As was pointed out by the Chancellor in *Hoagland v. Cooper, supra*, the executors were most certainly entitled to have the will construed in connection with the administration of the trust. Any other person interested in the administration of the trust was likewise entitled to have the will construed. Harold R. Whitfield, *cestui que trust* under the will, most certainly had such an interest as entitled him to have the will construed. Grace Whitehouse Lloyd and Eleanor Whitfield Simpson, for whom trust annuities were also provided were entitled to have the will construed, as was also Gertrude Happ.

The bill would have been maintainable, notwithstanding that no additional equitable relief was prayed for. But the complainants in the prior suit did not confine themselves to a prayer for construction of the will only. They charged that the executors were about to convey away the real and personal property which, according to their interpretation of the will, belonged to them, and they prayed that an injunction might issue to prevent this threatened injury, until their rights in the estate might be determined. In *Gillen v. Hadley*, 72 N. J. Eq. 505, it was held that such a bill would lie.

The subsequent passage of the New Jersey Chancery Act of 1915 further extended the jurisdiction of the Court of Chancery to construe wills in circumstances such as those *sub judice*. Section 7 of that act provides as follows:

“Decree to Declare Rights. Subject to rules, any person claiming a right cognizable in equity, under a deed, will, or other written instrument, may apply for the determination of any question of construction thereof, in so far as the same affects such right, and for a declaration of the rights of the persons interested.” (1 Cum. Sup. 1911-1924 to Comp. Stat. p. 271.)

From the time of the passage of this act to the present date, Chancery has been vested with jurisdiction to construe wills regardless of whether additional equitable relief was sought by the parties.

This statute was construed by the Court of Chancery in *In re Ungaro*, 88 N. J. Eq. 25, where Chancellor Walker held that the Court had jurisdiction to construe the will of one Ungaro, who had died seized of certain real estate in Newark, concerning which conflicting claims had been made. In doing so, he held:

“What the legislature meant by a ‘right cognizable in a court of equity’ was, in my judgment, a right over which, in and of itself, this court has jurisdiction, and it was intended that the jurisdiction should be exercisable where the right was present, although an accompanying circumstance, the presence of which theretofore alone permitted the right to be declared, was absent. In other words, I think the act was passed to enable this court to do the very thing which the petitioner is seeking to do, but cannot do in this proceeding as above pointed out.

“The petitioner may elect to file an amended petition, charging specifically the claim her brothers make with reference to her estate as legatee and devisee, making the brothers defendants and praying for the specific construction of the will and declaration of rights she is advised she is entitled to have made by the court.”

In *Snyder v. Taylor*, 88 N. J. Eq. 513 (Court of Chancery) a similar situation was presented to the late Vice Chancellor Backes. The bill was filed by the executors of a deceased son of the testator, praying for construction of one of the paragraphs of the will. There was no trust estate before the court and no equitable relief was sought. Nevertheless, the learned Vice Chancellor held that the Court had the power to construe the will. He held:

“The defendants, however, are clearly within the purview of the act, according to a recent construction placed upon it by the chancellor *In Re Ungaro's Will* (ante, p. 25). *Their claim to the legacy* is of a right cognizable in a court of equity, and having admitted the allegations of the bill and joined in the prayer for the construction of the will, thereby submitting themselves and the subject-matter to the jurisdiction of the court, the mooted question will be decided as on their behalf, and they will be bound by the decree.” (Italics ours.)

In *Miers v. Persons*, 92 N. J. Eq. 17, a controversy arose over the construction of the will of the late Supreme Court Justice Reed. The case involved the disposition of both real and personal property. Chancellor Walker held that the Court had the power to construe the will notwithstanding that no directions had been asked by the trustees. Citing *In re Ungaro, supra*, he held:

“No directions as to present action by the trustees are solicited. Formerly a suit would not lie for

the construction of a will without seeking equitable relief in the premises, the rule being that the court would only interpret the provisions of a will as an incident in the granting of relief, but now under the Chancery act (P. L. 1915, p. 184 §9) any person claiming a right cognizable in a court of equity under a will or other instrument, may apply for a declaration of the rights of the persons interested. *In re Ungaro*, 88 N. J. Eq. 25."

And further held:

"It is my opinion that the testator's direction that on the death of his daughter leaving no issue, the principal sum shall be paid to his next of kin surviving, includes the entire residue of his estate, real and personal."

In *Johnson v. Talman*, 99 N. J. Eq. 762, the executors of a will prayed for a decree declaratory of the rights of the parties thereunder. The suit involved the title to certain lands. In holding that the bill would lie, the Court held:

"The petitioners are executors of this will. They have entered into a contract for the sale of the premises in question. The right of the petitioners to a decree declaratory of the rights of the parties other than the defendant Randolph G. Talman is not disputed. There would seem to be no question as to the right of the petitioner to such a declaratory decree under the act referred to. Indeed, such a decree might have been had under the *Chancery act*, P. L. 1915, page 184 §9. See *In re Ungaro*, 88 N. J. 25."

To the same effect are:

Kutschinski v. Bourgingnon, 102 N. J. Eq. 89;
Buck v. Beckman, 102 N. J. Eq. 94;
Fidelity Union Trust Co. v. Roest, 113 N. J. Eq. 368;
Koehl v. Haase, 125 N. J. Eq. 567;
Joselson v. Joselson, 116 N. J. Eq. 180;
Sheridan v. Riley, 133 N. J. Eq. 288;
Summit Trust Co. v. McAuley Water St. Mission, 125 N. J. Eq. 505;
Taylor v. McClave, 128 N. J. Eq. 109;
West Jersey Trust Co. v. Hayday, 124 N. J. Eq. 85;
Nagle v. Conard, 79 N. J. Eq. 124, aff'd 80 N. J. Eq. 253.

In *Taylor v. McClave*, *supra* (1940), it was held:

"Courts of equity have jurisdiction over trusts and the construction of wills to the extent to which the trusts are hereby created. 69 C. J. 586, §1969. Equity has inherent jurisdiction to construe a will where the interpretation is incident to the granting of other relief sought by the bill of complaint. The enactment of the Chancery Act, chapter, 116, P. L. 1915, §7, extended the remedy of construction of wills to cases where no other relief is sought by the bill of complaint. *In re Ungaro*, 88 N. J. Eq. 25. See R. S. 1937, 2:26-68 *et seq.*"

The New Jersey Court of Errors and Appeals held to the same effect in affirming the decision of Vice Chancellor Stein in *Summit Trust Co. v. McAuley Water St. Mission*, 125 N. J. Eq. 505 (decided in 1939), where it was held:

“ ‘Section 7 of the Chancery act of 1915, 1 Cum. Supp. Comp. Stat., p. 271, §120, provides that “subject to rules, any person claiming a right cognizable in a court of equity, under a deed, will, or other written instrument, may apply for the determination of any question of construction thereof, in so far as the same affects such rights, and for a declaration of the rights of the persons interested.”

“ ‘The purpose of this act was considered by this court in *In re Ungaro*, 88 N. J. Eq. 25; 102 Atl. Rep. 244; *Miers v. Persons*, 92 N. J. Eq. 17; 111 Atl. Rep. 638; *Snyder v. Taylor*, 88 N. J. Eq. 513; 103 Atl. Rep. 396, and in *Potter v. Watkins*, 99 N. J. Eq. 538; 134 Atl. Rep. 84. In the last mentioned case the court said: “The statute of 1914 contemplates that, in order to be entitled to a construction a suitor must have a fixed equitable right of future enjoyment in the subject-matter of the instrument to be construed; that the judgment should be binding upon all parties interested in the subject-matter, and that all parties in interest should be before the court.” ’ ’ ’

Thus, there appears a uniformity of decision holding that, prior to the passage of the Chancery Act of 1915, the Court had jurisdiction to construe wills as incidental to its jurisdiction over trusts, or where other equitable relief was prayed for, and likewise holding that, since the passage of that act, any suitor having a right cognizable in equity might have the will construed by the Court of Chancery, provided all parties interested in the subject-matter were before the Court.

The passage of the Declaratory Judgments Act (P. L. 1924, Chapter 140, p. 312) further enlarged the jurisdiction of the Court to construe wills. Sections 1 and 2 of this Act provided as follows:

“1. Courts of record within their respective jurisdictions shall have power to declare rights, status,

and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

“2. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

These sections of the act were later carried over into the Revised Statutes and are now designated as R. S. 2:26-69 and R. S. 2:26-71. They provide as follows:

“2:26-69 Questions determinable and rights declarable.

“A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

“2:26-71 Declaration of rights or legal relations of interested parties in relation to estates, wills and other writings.

"A person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust or the estate of a decedent, an infant, lunatic or insolvent may have a declaration of rights or legal relations in respect thereto, to:

"a. Ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

"b. Direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

"c. Determine any question arising in the administration of the estate or trust, including the construction of wills and other writings."

This section authorizes the granting of relief on behalf of the fiduciary, devisee, legatee, heir, next of kin or cestui que trust of an estate. In the instant case, one of the petitioners, Harold R. Whitfield, was a *cestui que trust* under the will. Frank F. Whitfield claimed to be entitled to the remainder of the trust either as heir at law or next of kin. The executors were the fiduciaries charged with the carrying out of the trust. Grace Whitehouse Lloyd was likewise a *cestui que trust*, as was also Eleanor Whitfield Simpson. All parties interested in the administration of the trust or the ultimate disposition of the trust fund were before the Court. Upon this state of facts, the Court was clothed with jurisdiction to determine the controversy. *Snyder v. Taylor*, 88 N. J. Eq. 513.

A careful review of the cases cited in the petitioners' brief fails to reveal any departure from the rules of law and procedure prescribed in the foregoing cases. In *Hoagland v. Cooper*, *supra* (decided before the 1915

amendment to the Chancery Act), the Court clearly pointed out that it was vested with jurisdiction where the fiduciary sought its aid in reference to his official duty as trustee and further pointed out that the bill would lie when brought by the claimant to the estate in connection with a prayer for other specific equitable relief.

The case of *Goetz v. Sickel*, 71 N. J. Eq. 317, was likewise decided before passage of the Act of 1915. In addition to this, it deals with none of the facts that appear in the instant case. There, the trust was not before the Court. What the complainant sought was an adjudication as to who held title to the realty. Clearly, no grounds for the intervention of the Court of Chancery were there or were presented. This was pointed out in *Gillen v. Hadley*, 72 N. J. Eq. 513, in which the Court upheld complainant's right to construction of the will where there was an additional prayer for equitable relief.

In *Krickel v. Spitz*, 74 N. J. Eq. 581, there was no prayer for construction of the will at all. Likewise, in *Hoe v. Hoe*, 84 N. J. Eq. 401, the bill was one seeking advice only and was refused by reason of the fact that positive directions to govern the acts of the trustee were not asked for. The effect of the Chancery Act of 1915 was not involved in this decision at all.

In *Fidelity Union Trust Co. v. Roest*, 113 N. J. Eq. 368, cited by the petitioners, the Court of Chancery assumed jurisdiction over the controversy and held that it had the right to construe the will and determine the rights of the parties thereunder.

In *Hayday v. Hayday*, 39 Atl. 373, there was no relation of fiduciary involved. The only controversy was between two persons as to legal title to the estate.

In *Thropp v. Public Service Electric Co.*, 84 N. J. Eq. 144, the Court was concerned with a bill for injunction rather than for construction of a will. The sole question involved was whether an electric light company had the right to maintain poles on certain lands.

In *Smith v. Marrow*, 84 N. J. Eq. 395, the bill was to eject a defendant for breach of the conditions of a trust agreement. However, even in that case, the Court held that it had jurisdiction to construe the will at the behest of the fiduciary.

In *Torrey v. Torrey*, 55 N. J. Eq. 410, the Court held that the controversy involved a mere claim between two parties as to a purely legal title to land. It held, however, that where the construction sought was incidental to its jurisdiction over trusts, the bill would lie.

In *Patterson v. Currier*, 98 N. J. Eq. 48, the complainant claimed no equitable right under the will whatsoever, but claimed title to lands by virtue of a deed which he held. It is significant that this case was decided by Vice Chancellor Backes, who cited his own decision in *Snyder v. Taylor*, *supra*, which was buttressed upon the Chancellor's decision in *In re Ungaro*, 88 N. J. Eq. 25. Clearly, had the complainant in that suit been a devisee under the will, the Court would have had jurisdiction.

Township of Ewing v. Trenton, 137 N. J. Eq. 109, cited by the appellants, involved no question of construction, but had to do with a private controversy between two municipalities concerning a sewage system.

POINT III

The decision of the Court of Chancery in the will construction proceedings is *res adjudicata*.

In attempting to avoid the effect of the Court's determination in the will construction proceedings, the petitioners contended in the Court below that the matter which they sought to litigate in the subsequent law suit was never properly determined by the Court of Chancery or by the New Jersey Court of Errors and Appeals. They urged that it had never been in issue in the will construction case. The same argument is made in support of their present application to this Court.

A determination of this question again requires reference to the bill of complaint in the prior proceedings (R. p. 24, l. 25 to p. 28, l. 20). From a reading of the bill, it becomes apparent that the appellants did submit this controversy to the decision of the Court. In the bill, they made reference to the will of the testator and copies of the will and codicil were annexed to the bill. They admitted the existence of the trust of all the rest, residue and remainder of the decedent's estate. They contended that the premises at No. 73 Broad Street did not pass to the executors as part of the trust estate. They contended that they were entitled to the remainder of the estate either as heirs at law or next of kin of the testator, in the event that it was found that they were not designated in the will as the remaindermen. They charged that only the real estate of the testator might legally pass under paragraph Seventh of the will.

They thereupon alleged that they were without adequate remedy in the courts of law, and they prayed that the Court might declare their rights with respect to the last will and testament and codicil of the testator.

Nowhere in the will construction case is there any evidence in support of the contention now advanced that the question of the descent of the testator's realty was left to any other tribunal. The petitioners' claim to both the real estate and the personalty was fully argued before the Court, and the Court, in its opinion (R. p. 114 *et seq.*) makes this fully clear.

The rule of *res adjudicata* applicable to such a state of facts is set forth in 34 C. J. 742, Sec. 1154, as follows:

"The doctrine of *res judicata*, first definitely formulated in the Duchess of Kingston's case, embodies two main rules, which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction upon the merits concludes the parties and privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal. (2) Any right, fact or matter in issue, and directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered upon the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and privies whether the claim or demand, purpose of subject matter of the two suits is the same or not."

In *In re Walsh's Estate*, 80 N. J. Eq. 565; 74 Atl. 563, the New Jersey Court of Errors and Appeals held:

"The doctrine of *res adjudicata* has been clearly defined in this state, and it is the law "that the judgment of a court of competent jurisdiction on a question of law or fact, or on a question of mixed law and fact, once litigated and determined is, so long as it remains unreversed, conclusive upon the parties and their privies, not only as to the particular property involved in the suit in which it is pronounced,

but as to all future litigation between the same parties or their privies, touching the subject matter, though the property involved in the subsequent litigation is different from that which was involved in the first." " "

And further:

" "All that is necessary is that the right to relief in the one suit shall rest upon the same point or question which in essence and substance was litigated and determined in the first suit, and in such a case the parties and those in privity with them are concluded, "not only as to every matter which was offered and received to sustain or defeat the claim or demand but as to any other admissible matter which might have been offered for that purpose." *Id.*, 51 N. J. Eq. 53, 26 Atl. 325; *Cromwell v. Sac County*, 94 U. S. 351, 352, 24 L. Ed. 195.' "

And further:

" "Where the second action is upon a different claim or demand, but between the same parties, the judgment in the prior action operates as an estoppel only as to those matters in issue or point controverted upon the determination of which the finding or verdict was rendered. *City of Paterson v. Baker*, 51 N. J. Eq. 54, 26 Atl. 324. See also: *Mershon v. Williams*, 63 N. J. Law 401, 44 Atl. 211; *Clark Thread Company v. William Clark Co.*, 55 N. J. Eq. 662, 35 Atl. 599; *Mercer County Traction Company v. U. R. R. & Co.*, 64 N. J. Eq. 594, 54 Atl. 819. The judgment is final between the parties as to all defenses which were or could have been set up in the earlier suit. *Thompson v. Williamson*, 67 N. J. Eq. 212-214, 58 Atl. 602. "It is not necessary that the action in which the judgment is found, and that in which it is

relied on as an estoppel, should be of the same kind, or for the same cause of action." *Sawyer v. Woodbury*, 7 Gray (Mass.) 502, 66 Am. Dec. 518; *City of Paterson v. Baker*, 51 N. J. Eq. 54, 26 Atl. 324. The doctrine is not a mere rule of procedure but a rule of justice unlimited in its operation, which must be enforced whenever its enforcement is necessary for the protection and security of rights and for the preservation of the repose of society. *City of Paterson v. Baker*, 51 N. J. Eq. 59, 26 Atl. 324; *Putnam v. Clark*, 34 N. J. Eq. 540. It is a rule of law based upon two grounds: The first, that there should be an end to litigation, and, the second, that a person should not be twice vexed for the same cause. 24 Am. & Eng. Ency. of Law (2nd Ed.), pages 713, 714, and cases cited."

Clearly, examination of the bill and schedule indicates that there was a submission to the Court of the entire issue as to the interest of the petitioners in and to their father's estate.

Nor was the petitioners' bill the only pleading which made the issues in the prior litigation. The answer of the defendants-executors and the answer of Grace Whitehouse Lloyd and of the other annuitants, all set up issues for the determination of the Court. Thus, the answer of the executors denied the allegations of the complaint that the real estate at No. 73 Broad Street was not included as part of the trust estate and alleged that the exception set forth in paragraph Three in the will as to No. 73 Broad Street had no other effect than to limit the discretionary power of the executors with reference to the sale or mortgage of said real estate (R. p. 105). The executors charged that paragraph Three of the will in no wise limited the bequests and disposition of the estate of the testator (R. p. 103, l. 20 to p. 107, l. 42). The executors prayed for the construction of the will and codicil and for instructions (R. p. 107).

The answer of Grace Whitehouse Lloyd likewise denied the allegations of the complaint concerning the premises at No. 73 Broad Street, Red Bank, and charged that the exception with reference to this real estate, in the will, had no reference to the amount of the residue passed as part of the trust *res* and had reference only to the discretionary powers of the executrix (R. p. 101). Mrs. Lloyd likewise prayed in the alternative that the Court might construe the will in accordance with her answer (R. p. 102). Eleanor Simpson, formerly Eleanor Whitfield, likewise filed answer wherein she charged that the executors were under a duty to set up a fund sufficient to pay the contingent annuity provided for her in the will. A replication to this answer was filed by the appellants in which they conceded that it was the duty of the executors to set aside funds to pay all the annuities provided under the will (R. p. 110).

Any doubt as to the issues which were litigated in the original proceedings is completely dispelled by reference to the petition of appeal filed by the present petitioners in the prior proceedings in the Appellate Court (R. p. 36, l. 1 to p. 41, l. 10). In the petition of appeal it is charged that the Court below should have decreed that the last will and testament did not dispose of the testator's entire estate and that there was intestacy as to the residuary estate and the income therefrom. It further charged that the Court below should have decreed that Frank F. Whitfield, individually, and as guardian of Harold R. Whitfield, was entitled to share in the residuary estate and the income therefrom as the heirs at law and next of kin of the testator. It charged that the Court should have decreed that Grace Whitehouse Lloyd was not entitled to receive an annuity of One Thousand Dollars (\$1,000.00) from the trust fund, and it charged that the executors could not in law or equity, at any time, transfer to the Howard Whitfield Foundation any or all of the residuary estate. It further charged that the entire residuary

estate and the income therefrom belonged to Frank F. Whitfield, individually, and as guardian of Harold R. Whitfield (R. p. 39, l. 10 to p. 40, l. 31).

As has been pointed out, *supra*, the greater part of the decedent's estate consisted of real estate, of which the premises at No. 73 Broad Street were the principal portion. Thus, it appears from the pleadings filed in the will construction case, that not only was the entire trust fund generally before the Court, but the property at No. 73 Broad Street came in for particular attention and was specifically referred to in the bill of complaint filed. Certainly those who were the beneficiaries of the trust fund were entitled to know whether this real estate became part of the trust *res* under the will or whether it belonged to the petitioners herein. Likewise, the executors were entitled to know whether they held equitable title to the premises in question, as trustees under the will. The will itself provided:

"All the rest, residue and remainder of my estate, of whatsoever it may consist and wheresoever situate, I give, devise, and bequeath unto my executrix * * *."

The answer filed by the executors most certainly set forth the acceptance by the executors, and the performance by them, of the duty of administering the trust.

The prior case was not one in which the Court was called upon merely to determine whether the fiduciary was a trustee. It was one in which substantially all the pleadings filed, including the bill of complaint, referred to the trust which was set up of "all the rest, residue and remainder" of the estate. The only question in dispute concerned the administration of the trust. Did the trustees have equitable title to the real estate, so that they might devote the income therefrom towards payment of the annuities? Did the real estate pass immediately as part of the charitable trust set up in the Howard Whit-

field Foundation? The controversy was one which the complainants most certainly were entitled to have determined. Based solely on their answer and prayer for construction of the will and instructions, the Court had jurisdiction to determine the controversy, provided all parties interested were before the Court. *Snyder v. Taylor*, 88 N. J. Eq. 515, and *Summit Trust Co. v. McAuley Water St. Mission*, 125 N. J. Eq. 509.

Nor can it be contended that the matters determined by the Court were merely incidental to its decision. On the contrary, they constituted the very marrow of the case. In addition to invoking the aid of the Court in construing the trust provisions of the will, the appellants went a step farther; they prayed that the Court would "declare complainants' rights or relations in respect thereto" (R. p. 27, l. 40). By doing so, they placed directly in issue the question whether they took anything at all under the testator's will. The Court's answer was that they took nothing save the annuity provided for Harold R. Whitfield. It further held that all of the estate (including the real estate) passed to the executors in trust, the remainder, after payment of the annuities, to be transferred to the Howard Whitfield Foundation.

The determination of these questions cannot possibly be characterized as incidental. A reference to the citations in the defendants' brief reveals not a single authority for so holding. The statute itself prescribes that a judgment such as the one *sub judice*, shall have the force and effect of a final judgment or decree. R. S. 2:26-75. It is conclusive on the parties, if their rights, as determined by the Court in the first action, are clearly apparent from the judgment. *Brinley v. Meara*, 209 Ind. 144, 198 N. E. 301, 101 Atl. R. 682.

Although the real estate which is the subject of the present litigation was specifically mentioned in the petitioners' bill in the will construction suit, the Court's judgment would have been conclusive, even though this fact

were not present. All that was required was that the same point or question which was litigated or determined in the first suit, should be present in the second. The issue in the first suit was: Did the appellants take any present or future interest in the estate of the testator? The question was determined in the negative by the Court and affirmed by the Court of Errors and Appeals. In a second suit claiming part of the same estate, such determination was conclusive as between the parties, not only as to every matter which was offered and received to sustain or defeat their claim or demand but as to any other admissible matter which might have been offered for that purpose. *City of Paterson v. Baker*, 51 N. J. Eq. 49; *In re Walsh's Estate*, *supra*. This rule would apply even though the *res* in issue in the two suits might have been different. *City of Paterson v. Baker*, *supra*; *Fellman v. Henderson Building & Loan Ass'n*, 120 N. J. Eq. 367. And even had the second action asserted by the petitioners herein been based upon an entirely different claim or demand, the prior judgment would operate as an estoppel as to all "matters in issue or points controverted upon the determination of which the (prior) finding or verdict was rendered." *In re Walsh's Estate*, *supra*.

Conclusion

Following the death of the testator herein, the petitioners made claim to his estate, the greater part of which consisted of certain realty located at Red Bank, New Jersey. They claimed this realty either as devisees under the will or as heirs at law, in the event of intestacy. In support of their claim, they elected to institute proceedings in the Court of Chancery of New Jersey. In this tribunal of their own selection, they fully argued their claim. After a full hearing on the merits, an adverse decision was rendered. This decision they appealed to

the highest Appellate Court of the State. At no time was the jurisdiction of the Court below ever questioned. In the Appellate Court, the decree of the Court below was unanimously affirmed.

Subsequently, the petitioners instituted a second suit, making the same claim to the testator's real estate. Prosecution of this suit was enjoined by the Court of Chancery of New Jersey on the ground that the prior proceedings between the same parties, involving the same subject matter, were *res adjudicata*.

From these facts, it appears clear that the proceedings below have been "in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights." *Kenard v. Louisiana*, 92 U. S. R. 478. Petitioners have had, by the laws of the State of New Jersey, "a fair trial in a Court of Justice, according to the modes of proceeding applicable to such a case." *United Gas Public Service Co. v. State of Texas*, 303 U. S. R. 123.

Such being the case, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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